

Date: February 9, 1994

To: Nursing Homes

From: Judy Fryback, Director
Bureau of Quality Compliance

Subject: Transfer, Room Change and Discharge

BQC-94-006

NH 3
Supersedes BQC-93-033

This memorandum serves to update and replace the Bureau of Quality Compliance (BQC) numbered memo BQC 93-033 dated April 15, 1993 "Transfer, Room Change and Discharge." BQC has received clarification from HCFA regarding question number 8 of BQC 93-033. In addition, [question number 3](#) has been further clarified regarding transfer and discharge notice for hospitalizations. The clarified discussion, question and answer is underlined in the attached questions number 3 and 8. All other questions, answers and discussion contained in BQC 93-033 remain unchanged.

Nationally, many long term care facilities are certified solely for either Medicaid or Medicare. Additionally, many facilities nationally may have sections (distinct parts) of their facility which are certified only for either Medicaid or Medicare.

In Wisconsin, neither of the foregoing certification situations are the norm. There are a handful of Wisconsin long term care facilities which have a distinct part certified for Medicare only. However, the majority of long term care facilities in Wisconsin are totally certified for Medicaid and have a part of the facility dually certified for both Medicaid and Medicare.

The following discussion pertains to Wisconsin's long term care nursing facilities as they relate to Medicaid and/or Medicare certification and transfer, room change and discharge. [A grid](#) has been included as an attachment to this memo to further clarify the distinctions between transfer and room change.

DEFINITIONS:

A. Distinct Part:

That portion of the facility which is solely certified for either Medicare or Medicaid.

B. Dually Certified Part:

That portion of the facility which is certified for both Medicare and Medicaid.

C. Inter-facility transfer (between facility transfer):

1. The movement of a resident from a dually certified Medicare/ Medicaid part of a facility to a Medicare only or Medicaid only certified part of the facility
- or
2. The movement of a resident from a Medicare only distinct part of a facility to a non participating or non Medicare or non Medicaid certified part of a facility (HSS 132 licensed only)
- or
3. The movement of a resident outside of the certified institution.

When any of these moves occur, all of the transfer and notice requirements under 42 CFR 483.12 apply.

When a resident is being moved from a portion of the facility dually certified in both Medicare and Medicaid to a portion of the facility certified only for the Medicaid program, this move constitutes an inter-facility transfer. In this situation, the resident would be moved outside the bounds covered by a provider agreement (Medicare) and would be losing rights associated with that participation. Therefore, the resident would receive the inter-facility transfer protections found at 42 CFR 483.12 and 42 CFR 483.10(o) which significantly limit the ability of a facility to transfer a resident.

D. Intra-facility transfer (within facility transfer) or room change:

- a. The movement of a resident within the dually certified part of the facility
or
- b. The movement of a resident within the Medicaid only certified part of a facility
or
- c. The movement of a resident from the Medicaid only certified part of a facility to the dually certified Medicare/Medicaid part of the facility.

Movement of a resident from the portion of the facility that participates under Medicaid only to a portion that participates in both the Medicare and Medicaid programs would constitute an intra-facility transfer or **room change**. The move would not result in the loss of any rights covered under either the Medicare or Medicaid program. Notice rights under HSS 132.54; 42 CFR 483.10(b)(11)(ii)(A) and 42 CFR 483.15(b) and (e) apply.

The only justifications for room change in this instance, other than voluntary, are those stated in HSS 132.54 "transfer within the facility."

QUESTIONS AND ANSWERS CONCERNING TRANSFER, ROOM CHANGE AND DISCHARGE

1. Our nursing home has developed medical criteria delineating the medical needs required for a resident to remain in our Medicare certified unit. Once a resident has improved to the point of no longer meeting these medical criteria for the Medicare program, may we, the facility, transfer the resident upon 30-day notice to our Medicaid certified unit without the resident's agreement?

It is our intent that the transfer is not for the reason of providing room for another resident to obtain Medicare funding in our Medicare unit but because the discontinued Medicare ... "resident's health has improved sufficiently so the resident no longer needs the services provided by the facility" as per CFR 483.12(a)(2)(ii).

Answer(s):

- A. If the total facility is certified for Medicaid with a dually certified Medicare/Medicaid part, the answer is "NO". Even though the facility could claim that the resident no longer needs skilled care that qualifies for Medicare reimbursement, the facility is fully certified to provide nursing care under Medicaid. Therefore, even though the resident has improved, the resident still requires services that the facility is certified to provide under Medicaid anywhere in the facility, including in the Medicare/Medicaid dually certified unit.

Such movement of the resident from the Medicare/Medicaid dually certified part to the Medicaid only certified part of the facility would be an inter-facility transfer and the transfer protections found at 42 CFR 483.12 and right to refuse transfer at 42 CFR 483.10(o) apply.

- B. If the total facility is dually certified for both Medicaid and Medicare, the answer is conditional. Because this is a transfer within the facility (intra-facility transfer or room change), HSS 132.54 must be followed which allows

"transfer of a resident between rooms or beds within a facility for medical reasons or for the resident's welfare or the welfare of other residents."

If these requirements in HSS 132.54 are satisfied, this intra-facility movement of a resident may be accomplished as long as the resident receives prompt and reasonable notice before the resident's room or roommate is changed as per 42 CFR 483.10(b)(11)(ii)(A); 42 CFR 483.15(e)(2) and HSS 132.54.

- C. If the facility has a distinct part which is certified only for Medicare and the remainder of the facility is neither Medicare nor Medicaid certified (i.e. HSS 132 licensed only), the answer is "NO". Such movement of the resident from the Medicare only certified distinct part to a non certified portion of the facility is an inter-facility transfer. The resident would be moved outside the bounds covered by a provider agreement (Medicare) and would be losing rights associated with that participation. Inter-facility transfer protections found at 42 CFR 483.12 and 42 CFR 483.10(o) would apply.
2. There is a need in the facility for a resident to move nearer the nursing station for closer medical observation. All of the rooms nearer the nursing station are occupied. May the facility require that resident A, residing near the nursing station switch rooms with resident B in order to allow resident B, who needs additional monitoring, to move to resident A's room?

Answer(s):

- A. Scenario: the facility is fully certified for Medicaid with a dually certified Medicare/Medicaid unit. If resident A's room is in the dually certified Medicare/Medicaid part and resident B's room is in the Medicaid only certified part, resident A may not be required to move. This is an inter-facility transfer and in accordance with 42 CFR 483.12(a), a resident must be permitted to remain in the facility and the resident may not be transferred or discharged unless the facility can demonstrate that at least one of the following six criteria is met:
1. The transfer is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
 2. The transfer is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
 3. The safety of individuals in the facility is endangered;
 4. The health of individuals in the facility would be otherwise endangered;
 5. The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility; or
 6. The facility ceases to operate.

As none of the above six criteria are met for resident A in this instance, resident A may not be required to move from his bed in the dually certified Medicare/Medicaid part of the facility. In addition, under 42 CFR 483.10(o) resident A does have the right to refuse transfer. Of course, it is possible for resident A to voluntarily move.

- B. If resident A's bed and resident B's bed are both in the same certified unit of the facility (e.g. both beds are in the dually certified Medicare/Medicaid part or both beds are in the Medicaid only certified portion of the facility or Medicare only certified portion of the facility), the transfer may occur given the following:

Under HSS 132.54 "Transfer Within the Facility" and 42 CFR 483.10(b)(11)(ii)(A) and 42 CFR 483.15(e)(2), resident A may be asked to exchange rooms with resident B with reasonable and prompt notice and explanation of the reasons for transfer. HSS 132.54 further states that "transfer of a resident between rooms or beds within a facility may be made only for medical reasons or for the resident's welfare or the welfare of other residents or as permitted under s. HSS 132.31(1)(p)1."

3. When a resident is transferred to the hospital what notices must be given?

Answer:

A. A transfer/discharge notice and a notice of the facility's bedhold policy must be provided.

42 CFR 483.12(a)(4) states: "Before a facility transfers or discharges a resident, the facility must notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand."

42 CFR 483.12(b) requires that upon transfer to a hospital the "nursing facility must provide written information to the resident and a family member or legal representative that specifies the duration of the bedhold policy under the State plan." (Wisconsin's State Medicaid plan allows for a 15 day bedhold.)

Both the transfer/discharge notice and bedhold policy/notice may be included on the same facility form. The transfer/discharge notice must include all elements under 42 CFR 483.12(a)(6):

1. the effective date and reason for the transfer or discharge.
 2. the location to which the resident is being discharged.
 3. a statement that the resident has the right to appeal the action to the state under Wisconsin Administrative Code HSS132.53.
 4. and notification of how to contact the Ombudsman or other advocacy agency.
4. Do these documents in question #3 need to be given in hand to the resident as he/she "goes out the door" to the hospital or may they be sent with the medical transfer papers to the hospital?

Answer:

Per HCFA's interpretive guidelines effective 4/1/92:

"In cases of emergency transfer, notice at the time of transfer means that the family, surrogate, or legal representative are provided with written notification within 24 hours of the transfer. The requirement is met if the resident's copy of the notice is sent with other papers accompanying the resident to the hospital."

As stated in answer #3 above under 42 CFR 483.12(a)(4) and (b), notice must be given to both the resident and family member, surrogate or legal representative. Merely sending the papers with the resident to the hospital does not relieve the facility of the requirement of notifying the family, surrogate or legal representative.

5. Must a written/discharge notice be given when a person is transferred to another room:

- in the same Medicaid only certified part of the facility
- in the same Medicare only certified part of the facility
- in the same dually certified Medicaid/Medicare part of the facility
- from the Medicaid only certified part of the facility to the dually certified Medicaid/Medicare part of the facility?

Answer:

No, a written notice is not required in any of the above circumstances. These are room changes and under 42 CFR 483.15(e)(2) "A resident has the right to receive notice before the resident's room or roommate in the facility

is changed." HCFA's interpretive guidelines state: "This includes learning the resident's preferences and taking them into account when discussing changes of room or roommates and the timing of such changes."

6. If a resident **voluntarily** transfers from the dually certified Medicare/Medicaid part of the facility to the Medicaid only certified part of the facility, does the resident need to have written notice of transfer?

Answer:

Yes, this is an inter-facility transfer and the federal code specifies that written transfer/discharge notice be given regardless of voluntary vs. involuntary transfer. In addition, the resident must be given 30 day transfer notice but the resident may voluntarily choose to move sooner than the 30 day time period.

7. Our facility is totally certified for Medicaid with a dually certified Medicare/Medicaid unit. In this dually certified wing, we offer a special package of amenities such as a daily newspaper, beautician hair set once a week, carpeting, cable TV and shopper service. There is an added charge above the daily private pay rate for rooms in this wing for these added services. Each resident upon admission to this wing is advised of the added charge for the amenities.
- a. May we require each resident, regardless of pay status, to pay the additional charge in order to remain in this wing?
 - b. If the resident is unable to pay the added amenities charge, may we move the resident to another room in the Medicaid only certified part of the facility?
 - c. If there is no other bed available in the Medicaid only certified part of the facility for an individual who is not able to pay the extra amenities charge, may we discharge the resident from the facility for failure to pay?

Answer(s)

- 7a.
 - 1. If the resident is a private pay resident who has been made fully aware of the added charge upon admission to the unit, you may charge the resident the amenities fee.
 - 2. If the resident is a Medicare recipient who has been made fully aware of the added amenities charge upon admission to the unit and that Medicare would not pay for this added charge, you may charge the Medicare recipient the amenities fee.
 - 3. If the resident was a private pay resident or Medicare recipient who became eligible for Medicaid while a resident in this amenities unit or is a Medicaid recipient seeking admission/transfer to the unit, you may not charge the Medicaid recipient nor her/his family the extra amenities charge as a condition of admission to or continued stay on the unit per 42 CFR 483.12(d)(3)(i).
- 7b. Because this unit, which has special amenities, is also dually certified by Medicaid and Medicare, transfers out of this unit would be an inter-facility transfer and such resident transfers from the unit are protected by 42 CFR 483.12 and 42 CFR 483.10(o).
- 7c. The answer is "NO". 42 CFR 483.12(d)(3)(i) states that:

"A nursing facility may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State plan as included in the term 'nursing facility services' so long as the facility gives proper notice of the availability and cost of these services to residents **and does not condition the resident's admission or continued stay on the request for and receipt of such additional services.**"

A Medicaid recipient may not be considered as failing to pay for these additional services and the facility may not condition the resident's continued stay based on the Medicaid recipient's inability to pay for items not included in the State Medicaid Plan. Not only may the facility not discharge the Medicaid

recipient from the facility in this instance, but also as stated above, all provisions of 42 CFR 483.10(o) and 42 CFR 483.12 transfer and discharge rights apply as well.

8. Federal regulations at 42 CFR 483.12 state that before a resident is transferred or discharged, the facility must issue a notice to the resident which contains the effective date and reason for the transfer or discharge, the location to which the resident is being discharged, a statement regarding appeal rights and notification of how to contact the Ombudsman's or other advocacy agency. Wisconsin Administrative Code HSS132.53 also contains the involuntary discharge and appeal process.

The following question and answer was given in the April 15, 1993 BQC numbered memo 93-033. It is correct, however, it applies only to involuntary transfers.

When a resident is discharged to a private residence/home or discharged to a CBRF or group home or other community setting, must transfer noticing under 42 CFR 483.12 be followed?

Answer:

Yes. These transfer rights apply because the resident is being transferred or discharged "from the facility".

In addition, under 42 CFR 483.20(e) the facility must also prepare a Discharge summary that includes

- a. A recapitulation of the resident's stay
- b. A final summary of the resident's status
- c. A post discharge plan of care.

If the resident is being involuntarily discharged to a private residence/home, to the CBRF or group home or other community setting, HSS 132.53 must be followed which addresses the individual's notice rights, the procedure for an involuntary discharge and the involuntary discharge appeal process.

The following is the question posed to HCFA in order to get clarification on voluntary transfers and HCFA's response:

Does the transfer or discharge notice have to be given if it is the resident's choice to be discharged to either home, board and care or another NF? If the resident's family chooses to move the resident to another facility or take the resident home, and there is documentation in the clinical record that the resident agrees, does the notice of transfer have to be given?

Answer:

Transfer and discharge requirements at section 483.12(a) apply when the facility initiates the transfer or discharge. The purposes of the requirements are to ensure that residents remain in the facility in the absence of any of the six criteria at section 483.12(a)(2) and to inform residents of their rights to question the decision of a facility relating to their transfer. If a resident or a resident's legal representative initiates a transfer or discharge voluntarily, then these requirements do not apply.

The major change in the BQC-94-006 answer is as follows: BQC will not require transfer/discharge notices as they relate to **voluntary** transfers and discharges from a nursing facility to home, board and care or another nursing facility. However, a resident who voluntarily transfers or discharges in these instances, must be competent to make a decision of voluntary transfer or discharge.

The previous answer given in question number 8 in BQC 93-033, however, will be enforced by BQC for any discharges or transfers to home, board and care and another nursing facility which are **involuntary** on the part of the resident or legal representative. In addition, whether a discharge is voluntary or involuntary to home, board and care or another nursing facility, the facility is required to prepare a discharge summary that includes:

a. A recapitulation of the resident's stay

b. A final Summary of the resident's status

c. A post discharge plan of care.

9. What is the appeal process for an involuntary transfer or discharge from the facility?

Answer:

HSS 132.53(6) addresses the process for the appeal to the state of an involuntary transfer or discharge action. Currently this process is being reviewed due to new federal regulations covering appeals of involuntary transfer and discharge, and may change. If so, BQC will send a separate notice to all facilities.

The [attached grid](#) may be of help to you in distinguishing the difference between transfer and room change as they relate to Medicare and Medicaid certification in Wisconsin nursing homes.

If you have any questions regarding transfer and discharge rights, please contact your Field Operations Manager.

JF/SC/jh

4371.nm

cc: -BQC Staff

-Office of Legal Counsel

-Ann Haney, DOH Admin.

-Kevin Piper, BHCF Dir.

-HCFA, Region V

-Illinois State Agency

-Ohio State Agency

-Michigan State Agency

-Indiana State Agency

-Minnesota State Agency

-WI Coalition for Advocacy

-Serv. Employees Internat'l Union

-WI Counties Assn.

-LTC BQC Memo Subscribers

-Bur. of Design Prof., DRL

-Bd. on Aging & Long Term Care

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TRANSFER AND ROOM CHANGE IN THE SAME INSTITUTION

	Move to Bed in <u>Medicare Only</u> Certified Distinct Part	Move to Bed in <u>Medicare/</u> <u>Medicaid Dually</u> <u>Certified</u> Unit	Move to Bed in <u>Medicaid Only</u> Certified Unit*	Move to Bed in <u>NonCertified</u> Part of Facility (132 License Only)
Move to Bed in <u>Medicare</u> <u>Only</u> Certified Distinct Part	Room Change	**	**	Transfer
Move to Bed in <u>Medicare/</u> <u>Medicaid Dually</u> Certified Unit	**	Room Change	Transfer	Transfer
Move to Bed in <u>Medicaid</u> <u>Only</u> Certified Unit*	**	Room Change	Room Change	Transfer

* In Wisconsin, "Medicaid Only Certified Unit" is always the full facility.

** Not applicable in Wisconsin